United Nations A/72/128

General Assembly

Distr.: General
12 July 2017

Original: English

Seventy-second session
Item 73 (b) of the preliminary list*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, submitted pursuant to Human Rights Council resolutions 15/8 and 34/9.

* A/72/50.

17-11724 (E) 300817

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Summary

In the present report, the Special Rapporteur examines the right to housing of persons with disabilities. She provides an overview of their diverse housing circumstances — from institutionalization, homelessness and grossly inadequate housing to experiences of stigmatization and exclusion — linked to a broad range of impairments, including psychosocial, physical, sensorial and intellectual, as well as perceived impairments. She questions why those widespread human rights violations have not been addressed as a priority by States or the international community.

The Special Rapporteur considers how the "disability human rights paradigm" affirmed in the Convention on the Rights of Persons with Disabilities has the potential to breathe new life into the right to adequate housing. She highlights the fundamental principles of a human rights-based approach to disability, such as dignity, substantive equality, accessibility and participation, as well as the overriding obligation to realize the right to housing to the maximum of available resources, and correlates them to the key features of the right to adequate housing. She reflects on how the right to housing can be more effectively claimed by persons with disabilities and adjudicated by courts and tribunals and reviews some effective policy and legislative initiatives that are necessary to implement that right.

She concludes her report with key recommendations highlighting the transformative potential of the disability human rights paradigm and how it must be better harnessed in order to realize the right to housing of persons with disabilities in accordance with the commitments of the 2030 Agenda for Sustainable Development.

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I. Human rights-based approach to disability and the right to adequate housing[1]

1. For persons with disabilities, choosing where and with whom to live, being part of a community and having access to adequate and accessible housing are central to a life of dignity, autonomy, participation, inclusion, equality and respect for diversity. The indivisibility and interdependence of the right to adequate housing with other human rights are at the heart of the lived experience of persons with disabilities. Access to safe and secure housing, to water and sanitation in the home and to community life with access to services and forms of support is often the difference between life and death, security and abuse, and belonging and isolation. Yet the right to adequate housing is frequently absent from initiatives promoting the human rights of persons with disabilities. It is imperative that the right to adequate housing be accorded the same centrality in the implementation of the rights of persons with disabilities as housing occupies in their lives.

2. In the Special Rapporteur's view, the right to adequate housing of persons with disabilities must be understood as a dialogue between the jurisprudence and commentary that has evolved over many years and is guaranteed under the International Covenant on Economic, Social and Cultural Rights and the framework for the human rights of persons with disabilities set forth in the Convention on the Rights of Persons with Disabilities. The right to housing enshrined in article 11 of the International Covenant has been understood to encompass much more than physical shelter. It is recognized as the right to live in security, peace and dignity. It is fundamentally connected to the rights to life and to non-discrimination and the freedom to choose where to live, as well as to the rights to freedom of expression and association and to participate in public decision-making. It includes security of tenure, the availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, appropriate location and cultural adequacy.[2] Those central components of the right to housing have special meaning for persons with disabilities and give rise to particular obligations of States and other actors.

3. At the same time, the right to adequate housing must incorporate the transformative understanding of the human rights of persons with disabilities that is encapsulated in the Convention on the Rights of Persons with Disabilities. The "disability human rights paradigm" represents a "dramatic change in rights discourse".[3] It gives new meaning to the concepts of the interdependence and the indivisibility of rights, in particular in relation to the right to live in dignity in a home within a community. It rejects charitable and medical approaches to disability, recognizing that discrimination, inequality and disadvantage are socially constructed responses to diversity and difference. It offers a human rights-based alternative, placing persons with disabilities at the centre of their own lives, as subjects of rights. It recognizes that discrimination often takes the form of programmes and policies designed to meet the needs of dominant groups while

[1] The Special Rapporteur is grateful for all the contributions received for the present report, in particular from the Special Rapporteur on the rights of persons with disabilities, the Human Rights and Disability Adviser of the Office of the United Nations High Commissioner for Human Rights and the participants in an expert consultation, held in Geneva on 23 June 2017. She also thanks Governments, civil society, disability organizations and individuals for their submissions, which are available from www.ohchr.org/EN/Issues/Housing/Pages/Therighttohousingofpersonswithdisabilities.aspx.

[2] Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991) on the right to adequate housing, para. 8.

[3] Michael Ashley Stein, "Disability human rights", *California Law Review*, vol. 95, No. 1 (February 2007), p. 74.

ignoring the needs of persons with disabilities. It affirms that dignity, autonomy, independence and participation rely on not only freedom from institutionalization and State control but also positive measures by Governments to support the right to live in the community as one chooses.

4. The incorporation of the human rights-based approach to disability into the understanding of the right to adequate housing is a work in progress. In the formative years of international human rights development, persons with disabilities were often invisible and their right to adequate housing often neglected. Disability was not listed as a ground of discrimination in the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights or the International Covenant on Civil and Political Rights. Disability began to receive more attention during the International Year of Disabled Persons in 1981 and the United Nations Decade of Disabled Persons (1983-1992), but a normative framework was not developed until 1993, when the Standard Rules on the Equalization of Opportunities for Persons with Disabilities were adopted by the General Assembly.

5. In 1994, the Committee on Economic, Social and Cultural Rights made an important advance with the adoption of general comment No. 5 (1994) on persons with disabilities. The Committee noted that an estimated 70 per cent of persons with disabilities worldwide lacked access to the services that they required and that "there is no country in which a major policy and programme effort is not required".[4] It emphasized that States were required "to take positive action to reduce structural disadvantage ... in order to achieve the objectives of full participation and equality within society for all persons with disabilities" and that that included the right to support services for living in the community and to housing that was accessible, with additional resources made available.[5]

6. The negotiation of the Convention on the Rights of Persons with Disabilities, however, brought about a transformative approach to disability, placing the economic, social and cultural rights and the civil and political rights of persons with disabilities within a unified framework. In the Convention, the right to adequate housing is recognized on an equal basis without discrimination, including through the provision of reasonable accommodation. Furthermore, a substantive right to adequate housing for persons with disabilities is affirmed outside an "equal enjoyment" framework and without comparison to the mainstream population. It is thus recognized in the Convention that the right to adequate housing has a particular meaning for persons with disabilities and imposes distinct obligations upon States.

7. In the light of the extreme conditions of inadequate housing, institutionalization and homelessness experienced by persons with disabilities around the world and the commitment made by States in the 2030 Agenda for Sustainable Development to ensure access to adequate and affordable housing by 2030, the Special Rapporteur considers the incorporation of the disability human rights paradigm into the right to adequate housing to be a matter of the highest priority for States and the international community.

[4] Committee on Economic, Social and Cultural Rights, general comment No. 5 (1994) on persons with disabilities, para. 8.

[5] Ibid., para. 9.

II. Housing realities of persons with disabilities

A. Statistical challenges

8. It is estimated in the *World Report on Disability 2011* that persons with disabilities make up between 15.6 and 19.4 per cent of the global population. The percentage is higher in lower-income countries, at 18 per cent of the population, compared with 11.8 per cent in higher-income countries.[6] There are therefore more than 1 billion persons with disabilities around the world, yet little data are publicly available on the housing circumstances of that population.

9. The lack of consistent implementation of accepted methods of surveying persons with disabilities has led to significant variance in data, making comparisons across countries or regions difficult.[7] General surveys and censuses conducted by household often overlook individuals who are homeless or living in unrecognized informal settlements, institutions or group care facilities. When information has been collected on persons with disabilities, narrow definitions have usually been applied and housing concerns ignored.

10. The Washington Group on Disability Statistics has developed two standard sets of questions for surveying populations. The short set covers six core areas of activity and has been adopted by 70 countries. It provides the best opportunity for States to obtain disaggregated data that will allow international comparisons and benchmarks.[8] The extended set of questions covers a greater range of domains of functioning, a number of which are associated with psychosocial impairments.[9] Neither set addresses housing. The best way to obtain reliable data on housing and disability is to conduct surveys based on the extended set of questions of the Washington Group, supplemented by questions on housing and homelessness.

11. Surveys of the existing housing conditions of persons with disabilities reveal significant inequality in the enjoyment of the right to housing. In such a survey conducted by the Republic of Korea in 2015, it was found that persons with disabilities were far more likely than others to have difficulty paying rent and other housing expenses, less likely to have "suitable" housing and more likely to have housing that did not meet the minimum standards of habitability.[10]

B. Housing experiences of persons with disabilities

1. Stigmatization, discrimination and criminalization

12. Stigmatizing notions of disability as an abnormality, inferiority or medical condition associated with disease manifest acutely in the housing experiences of persons with disabilities. People with disabilities are often forced to remain in their homes because of stigma and fear of violence. Proposed housing for persons with psychosocial or intellectual disabilities is frequently subject to neighbourhood opposition, and residents are frequently shunned or ostracized by neighbours.

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[6] World Health Organization and World Bank, *World Report on Disability 2011* (Geneva, WHO Press, 2011), pp. 25-29.

[7] Ibid., pp. 21-29.

[8] The short set of questions is available from www.washingtongroup-disability.com/washington-group-question-sets/short-set-of-disability-questions/. The six questions relate to seeing, hearing, walking, cognition, self-care and communicating.

[9] The extended set is available from www.washingtongroup-disability.com/washington-group-question-sets/extended-set-of-disability-questions/.

[10] See the submission by the Republic of Korea for the present report.

Children with disabilities are frequently hidden away and denied access to extended family, neighbours and other children.[11]

13. When seeking both private and public housing, persons with disabilities face overt and indirect discrimination. Sometimes access to housing is denied because of an irrational fear that facilities will be contaminated. Income and employment status is used in many countries to vet prospective tenants such that well-paid, full-time workers without a disability are considered to be "qualified" for affordable rental housing, while persons with disabilities with lower incomes are denied access. People with psychosocial disabilities are often treated as unworthy tenants because of "abnormal" behaviour that is defined as "antisocial". Persons with intellectual disabilities are also discriminated against on the basis of an assumed lack of capacity to take care of the premises and deprived of the legal capacity to sign rental agreements.

14. Discrimination is compounded by other grounds, notably sex, gender, socioeconomic status, race and belonging to ethnic, religious or linguistic minority groups. Indigenous peoples in Canada experience twice the rate of disability as the non-indigenous population and are subjected to intersecting discrimination on the basis of indigeneity, poverty and disability.[12] Criminalization of persons with disabilities, in particular those living in homelessness and those with psychosocial disabilities, is common. A typical pattern for persons with psychosocial disabilities is first to lose their housing, when their needs are not accommodated or when they do not receive adequate financial assistance, then to be criminalized in the context of homelessness and then to be incarcerated. In prison, punitive responses for persons with psychosocial disabilities result in extended isolation, segregation, further deterioration of mental health and an ongoing cycle of homelessness and incarceration.

2. Institutionalization and deprivation of choice

15. Institutionalization is a clear example of how violations of the right to housing occur when disability is misconstrued as a medical condition. Removing persons with disabilities from the general population and subjecting them to isolation and extreme social control is rationalized on the basis that they are being provided with "treatment" or "care". Institutionalization often combines the worst living conditions with severe deprivation of liberty and cruel and inhuman treatment, including physical and sexual abuse. Conditions are invariably overcrowded, with limited or no access to sanitation and hygiene facilities, as has been documented in countries including Guatemala, Indonesia and Mexico.[13] Residents in institutions and institution-like settings are often precluded from having outside social or family relations and deprived of choices about activities, social relationships, sexuality and identity. Persons with psychosocial or intellectual disabilities are at highest risk of being institutionalized forcefully[14] and, outside formal institutions, are often

[11] United Nations Children's Fund (UNICEF), "Children and young people with disabilities", fact sheet (May 2013), p. 23. Available from www.unicef.org/disabilities/files/Factsheet_A5__Web_NEW.pdf.

[12] See the submission by a coalition of Canadian non-governmental organizations for the present report.

[13] A/71/310, paras. 25-26; case No. PM 370/12, patients at the Federico Mora Hospital, Guatemala; Human Rights Watch, "Living in hell: how people with mental health conditions in Indonesia are treated" (21 March 2016), available from www.hrw.org/report/2016/03/21/living-hell/abuses-against-people-psychosocial-disabilities-indonesia; Disability Rights International, "No justice: torture, trafficking and segregation in Mexico" (Mexico City, 2015), available from www.driadvocacy.org/wp-content/uploads/Sin-Justicia-MexRep_21_Abr_english-1.pdf.

[14] A/HRC/28/37, para. 19.

subjected to extreme levels of institution-like control in privately operated rooming houses or "halfway" houses.

16. Orphanages housing abandoned children similarly institutionalize and isolate children with disabilities. One study found that 45 per cent of children living in Russian State institutions had impairments.[15]

17. Forced institutionalization often occurs as an indirect result of other violations of the right to adequate housing. When States fail to provide necessary forms of support for living in the community, or when persons with disabilities or their families simply have no means to afford housing, persons with disabilities may be forced to live in institutions because of a lack of housing options.[16] Legislative protection of legal capacity and supportive decision-making can be rendered ineffective in the context of housing decisions when there is no support or affordable housing available for living in the community.

18. In other circumstances, living in an institutional setting or remaining with family may be a decision made by a parent, guardian or family member on behalf of a person with a disability. Institutions that are originally presented as optional may subsequently deny residents the right to leave. Years of living in segregated settings have devastating effects on the autonomy of residents and their ability to exercise independent agency, making it difficult for them to trust or imagine a positive community-based alternative.

19. Deinstitutionalization without adequate housing and community support can have devastating consequences. In Gauteng Province, South Africa, more than 1,300 persons with psychosocial and intellectual disabilities were transferred owing to government budget cuts from a private hospital to the care of an array of non-governmental organizations, most of which lacked the capacity, oversight and resources necessary to address the needs of those transferred. This led to widespread ill-treatment and the death of more than 70 persons.[17]

3. Homelessness

20. Homelessness disproportionately affects persons with disabilities. In a vicious circle, disability often leads to homelessness and homelessness, in turn, creates or exacerbates impairments and additional barriers linked to stigma and isolation. Of the homeless adults in shelters in the United States of America, 43 per cent have a disability.[18] Persons with psychosocial and intellectual disabilities are particularly vulnerable to homelessness and its effects.

21. The Special Rapporteur has proposed a new rights-based framework under which homelessness is understood as a deprivation of housing (both physical and social) but also as a socially constructed group identity that is linked to stigmatization and discrimination, much of which is rooted in perceptions about persons with disabilities. As a result, in most places, that population suffers severe isolation and neglect. Homelessness and related violations of the right to life often

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[15] Human Rights Watch, "Children with disabilities living in special homes in Russia: what life is like and what needs to change", 15 September 2014. Available from www.hrw.org/report/2014/09/15/abandoned-state/violence-neglect-and-isolation-children-disabilities-russian.

[16] A/HRC/28/37, para. 25.

[17] See communication from South Africa, available from www.ohchr.org/EN/Issues/Housing/Pages/Communications.aspx; Malegapuru W. Makgoba, "The report into the circumstances surrounding the deaths of mentally ill patients: Gauteng Province" (Pretoria, South Africa, Office of the Health Ombud, 2017).

[18] National Council on Disability, "The state of housing in America in the 21st century: a disability perspective" (Washington, D.C., 19 January 2010), p. 10. Available from www.ncd.gov/publications/2010/Jan192010.

result from deinstitutionalization without adequate community support or affordable housing in the community.[19]

22. Homelessness for persons with disabilities is also linked to the breakdown of family relationships. A study in Montreal, Canada, of homeless persons with intellectual disabilities found that almost all individuals who lived on the street or in shelters had had no contact with their families since becoming homeless.[20] On mission in Chile, the Special Rapporteur visited a homeless shelter run by the Salvation Army in Valparaiso where many of the residents were persons with intellectual or psychosocial disabilities who had been shunned or abandoned by their families.

4. Informal settlements and homeless encampments

23. Persons with disabilities living in poverty in cities commonly live in informal settlements or homeless encampments. The Special Rapporteur has been shocked by the deplorable conditions endured by persons with disabilities in those contexts. Many, including young children and older persons, are left to languish in isolation, sometimes in dark rooms without electricity, hidden from view at the back of the home, without access to community centres, social opportunities or health clinics.

24. Water, sanitation and hygiene facilities are often inaccessible and located some distance from the home. Those with mobility impairments may be dependent on assistance or forced to drag themselves along the ground to reach the facilities. In many situations, persons with disabilities are simply unable to gain access to toilets, must defecate in their homes and are often unable to remove waste. Streets or alleys in informal settlements are often sand, gravel or mud, sometimes built into steep cliffs and hill-sides, and are not accessible to persons in wheelchairs or with reduced mobility.

25. The experiences of persons with intellectual or psychosocial disabilities living in informal settlements and homeless encampments vary. In some cases, communities develop impressive informal networks to provide the necessary support and ensure inclusion in the community, providing community living that avoids institutionalization and segregation. In other situations, however, as observed first-hand by the Special Rapporteur on mission, informal settlements duplicate societal patterns of discrimination and isolation, exacerbated by deprivation of the most basic necessities.

5. Living with family

26. For many persons with disabilities, living with family members and relying on informal support is their only option. Family members commonly show strong commitment in their provision of support. Those providing support are usually women, who are frequently abandoned by spouses and required to relinquish possibilities of employment, leading to long-term poverty.[21]

27. In other circumstances, however, living with family is not an appropriate or safe option. Persons with disabilities are more likely to be subjected to abuse within families or other households. A study in Uganda found that half of interviewees with psychosocial disabilities reported having been subjected to abuse at the hands of

[19] A/HRC/34/58, para. 18.

[20] C. Mercier and S. Picard, "Intellectual disability and homelessness", *Journal of Intellectual Disability Research*, vol. 55, No. 4 (Montreal, 2011), pp. 441-449.

[21] A/HRC/34/58, para. 20.

their relatives.[22] Another study found a high incidence of abuse among children with disabilities by someone upon whom they were dependent for survival and well-being.[23] Individuals are sometimes tied or chained up by family members[24] or left locked in isolation.[25] The ability to speak out is limited by the individual's isolation and dependence upon the perpetrator for support, and, in many situations, there is no one to turn to for help.

6. Housing, neighbourhoods and programme design

28. Most housing and development is designed as if persons with disabilities do not exist, will not live there or deserve no consideration. Housing programmes and urban planning are rarely vetted for barrier-free design, and international development assistance for housing rarely includes requirements or resources for accessible housing. Housing funding and individual housing subsidies provided by many Governments are based on what are considered "normal" expenditures on food, housing and other necessities, without consideration of the higher expenditure requirements of persons with disabilities. Eligibility for credit or for rental contracts is usually assessed on the basis of the "normal" ratio of credit or rent to income, which would be unattainable and certainly not "normal" for persons with disabilities.

29. Inaccessible housing and programmes designed without consideration of the needs of persons with disabilities deprive society of the benefits of the full participation of persons with disabilities in all areas of life and are costly to States. Moreover, reasonable accommodation of individual needs is considerably more costly and difficult than it would be if housing were designed to be accessible or easily modified.[26]

7. Natural disasters, conflict and other humanitarian situations

30. Mass displacement caused by situations of risk, including armed conflict, humanitarian emergencies and natural disasters, has catastrophic effects on persons with disabilities. In a survey by the United Nations, it was found that only 20 per cent of persons with disabilities could evacuate their living spaces immediately without difficulty in the event of an emergency and that a disproportionate number would be injured or die in the event of a disaster because their needs would not met by organized efforts.[27] Persons with disabilities who are refugees, affected by disasters or living in conflict and post-conflict situations are especially vulnerable to mass, often repeated displacement, resource shortages, limited or non-existent services and access to rehabilitation or reconstruction and a wide array of security concerns.

31. Conflict and displacement also give rise to increased numbers of persons with disabilities. In Lebanon, the Syrian Arab Republic and the Gaza Strip, for example,

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[22] Mental Disability Advocacy Centre and Mental Health Uganda, *"They Don't Consider Me as a Person": Mental Health and Human Rights in Ugandan Communities* (2014), p. 16.

[23] Handicap International and Save the Children, "Out from the shadows: sexual violence against children with disabilities" (London, Save the Children UK, 2011), p. 15. Available from www.savethechildren.org.uk/sites/default/files/docs/out_of_the_shadows_5.pdf.

[24] Mental Disability Advocacy Centre and Mental Health Users Network of Zambia, *Human Rights and Mental Health in Zambia* (2014), p. 24.

[25] Mental Disability Advocacy Centre and Mental Health Uganda, *"They Don't Consider Me as a Person"*, p. 17.

[26] Committee on the Rights of Persons with Disabilities, general comment No. 2 (2014) on accessibility, para. 15.

[27] United Nations Office for Disaster Risk Reduction, "Living with disability and disasters: UNISDR 2013 survey on living with disabilities and disasters — key findings" (2014), p. 2.

conflict has contributed to high numbers of persons with disabilities.[28] At the same time, in each of those places, adequate, accessible housing is extremely scarce, with housing stock having been destroyed and a lack of access or specific policies blocking access to the materials and resources necessary to rebuild homes. In refugee camps, poorly lit and remotely located latrines can lead to difficult access and experiences of sexual violence for women with disabilities, while crowded, narrow walkways can result in persons with visual impairments falling into open sewers.[29]

32. The right to housing is a central part of humanitarian action, from emergency shelter to longer-term accommodation and settlement. Until recently, however, shelter has been provided without consideration of the potential barriers for persons with disabilities.

III. Central principles of the human rights-based approach to disability

33. The unique fusion of civil, political and economic and social and cultural rights in the Convention on the Rights of Persons with Disabilities has immense potential to breathe new life into the right to adequate housing of persons with disabilities. Five central tenets of the disability human rights paradigm are particularly important in understanding the right to adequate housing in that context.[30]

1. Dignity, autonomy and freedom to choose

34. "Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons" is a guiding principle set forth in article 3 (a) of the Convention that is particularly critical in the interpretation of the right to adequate housing. The deprivation of choice of where and with whom to live is often the most critical assault on dignity and autonomy for persons with disabilities.

35. Freedom of choice for persons with disabilities is not just a civil and political right to freedom from forced institutionalization. In article 19 of the Convention, the right to be free to choose where and with whom one lives is set out as a positive right to be included in the community, with access to a range of residential and other support services. In addition, article 19 must be read in conjunction with and is reinforced by article 28 to require not only services but also adequate, accessible housing in which to live.

2. Substantive equality and non-discrimination

36. In the Convention, a broad and substantive concept of the right to equality and non-discrimination is affirmed. Prohibited discrimination includes any distinction,

[28] Palestinian Central Bureau of Statistics, "On the eve of the International Population Day", 11 July 2013. Available from www.pcbs.gov.ps/site/512/default.aspx?tabID=512&lang=en&ItemID=844&mid=3171&wversion=Staging; Jad Chaaban and others, "Survey on the socioeconomic status of Palestine refugees in Lebanon" (American University of Beirut and the United Nations Relief and Works Agency for Palestine Refugees in the Near East, 2016), p. 10; HelpAge International and Handicap International, *Hidden Victims of the Syrian Crisis: Disabled, Injured and Older Refugees* (London and Lyon, Park Lane Press, 2014), p. 6.

[29] Michael Ashley Stein and Janet E. Lord, "Enabling refugee and IDP law and policy: implications of the U.N. Disability Convention on the Rights of Persons with Disabilities", *Faculty Publications* (2011), pp. 408 and 431.

[30] Convention on the Rights of Persons with Disabilities, arts. 3, 9, 19 and 28.

exclusion or restriction on the basis of disability that has the purpose or effect of impairing or nullifying the enjoyment of human rights, including the right to adequate housing. As such, the provision extends to any failures to address systemic inequality in access to adequate housing, including those relating to inadequate services, insufficient social protection and a lack of affordable housing.

37. The right to non-discrimination also requires Governments and private actors to take positive measures to reasonably accommodate the needs of persons with disabilities insofar as such accommodation is "necessary and appropriate" and does not impose a "disproportionate or undue burden". Reasonable accommodation is not restricted to physical modifications to existing housing. It also includes an obligation to adapt the application of laws and policies.[31] As a component of the right to non-discrimination, reasonable accommodation is considered an immediate obligation of States.

38. Equality and non-discrimination are crucial for the realization of the right to housing of persons with disabilities under article 28. States must take positive measures to the maximum of available resources to address systemic homelessness and deprivation of housing, which disproportionately affects persons with disabilities, and to strive towards the full realization of the right to adequate housing for all persons with disabilities. In the Convention, it is made abundantly clear that the right to non-discrimination of persons with disabilities is not simply a negative right, requiring Governments and private actors to refrain from actions that exclude persons with disabilities, but also a positive right, requiring them to take measures to ensure the enjoyment of the right to housing. As Andrea Broderick notes, "the intersection of equality and socioeconomic rights in the [Convention on the Rights of Persons with Disabilities] may provide a key to unlocking the structural inequalities which disabled people, and by extension other marginalised groups, have encountered for too long now".[32]

3. Accessibility

39. Article 9 of the Convention, in which the obligation of States to identify and remove barriers and ensure accessibility is outlined, is another unique provision in that instrument that is particularly important to housing. As affirmed by the Committee on the Rights of Persons with Disabilities in its general comment No. 2 (2014) on accessibility, accessibility is an enabling condition to ensure that persons with disabilities live independently and participate fully in all aspects of life.[33]

40. Under article 9, States are required to ensure that all housing available to the public, including social and private rental housing, takes into account all aspects of accessibility for persons with disabilities. In the article, a broad range of accessibility issues "encompassing the physical environment, transportation, information and communication, and services"[34] are addressed and obligations are established to: ensure physical accessibility, such as through ramps and accessible doors, as well as the accessibility of windows, bathrooms and kitchens; remove the communication barriers confronted by persons with disabilities applying for and living in housing; and ensure access to work, services and public spaces — in short, to ensure that all aspects of the housing environment are accessible. As the Special Rapporteur has consistently noted in her dialogue with government officials, under

[31] See, for example, Communication No. 3/2011, *H.M. v Sweden*, views adopted on 19 April 2012.
[32] Andrea Broderick, "Harmonisation and cross-fertilisation of socio-economic rights in the human rights treaty bodies: disability and the reasonableness review case study", *Laws (Special Issue Disability Human Rights Law)*, vol. 5, No. 4 (2016), p. 14.
[33] Committee on the Rights of Persons with Disabilities, general comment No. 2, paras. 13-14.
[34] Ibid., para. 13.

that article, States are also required to address economic and social accessibility barriers by ensuring sufficient benefits or housing subsidies to cover the cost of adequate housing and other services.

41. Article 9 should also be read in conjunction with the obligation to progressively realize the right to adequate housing under article 28. As Gerard Quinn observed, "many of these obligations will require resources and extensive systemic change — all subject to the overall obligation of progressive achievement contained in article 4.2 with respect to socioeconomic rights".[35] The obligations of States under article 9 can be seen as components of the requirement to immediately implement inclusive rights-based strategies for the realization of the right to housing. Both housing strategies and plans for the implementation of accessibility must establish definite time frames, allocate adequate resources, prescribe the duties of the public authorities, including regional and local authorities, and private actors and ensure participation and consultation with those affected.[36] Ensuring that any new housing is developed in accordance with barrier-free design requirements is an immediate obligation of States. States must also adopt, as quickly as possible, legislation and plans to ensure that barriers in existing housing are removed over time.[37]

4. Participation and access to justice

42. Participation is integral to the implementation of the right to housing of persons with disabilities. In article 4 (3) of the Convention, it is stated that, in the implementation of legislation, policy or other decisions, States must closely consult with and actively involve persons with disabilities through their representative organizations. As stated by the Special Rapporteur on the rights of persons with disabilities, participation leads to the promotion of agency and empowerment, ownership, pride and better decisions, since persons with disabilities are best placed to identify their diverse needs.[38] Effective participation, however, must be grounded in human rights and meaningful accountability. Under article 33 of the Convention, all States are required to develop independent institutions to monitor its implementation, including the right to housing, ensuring that persons with disabilities and their representative organizations are involved and participate fully in the monitoring process.

43. Under article 13 of the Convention, it is required that persons with disabilities have effective access to justice in all stages of legal proceedings, on an equal basis with others. States should ensure access to justice for claims relating to the right to adequate housing of persons with disabilities, establish complaints and accountability mechanisms and ensure that courts are authorized and adequately resourced to hear and adjudicate claims relating to the right to adequate housing of persons with disabilities. National human rights institutions also have an important role to play in facilitating participation and effective monitoring by providing independent accountability mechanisms and in facilitating access to justice through complaints procedures or by supporting or initiating systemic claims before courts or tribunals.

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[35] Gerard Quinn, "The interaction of non-discrimination with article 9: added reasonment", unpublished paper, September 2010, cited by Janet Lord in a presentation given in 2010 for the general day of discussion on accessibility of the Committee on the Rights of Persons with Disabilities.

[36] Committee on Economic, Social and Cultural Rights, general comment No. 4, para. 12; Committee on the Rights of Persons with Disabilities, general comment No. 2, para. 24.

[37] Committee on the Rights of Persons with Disabilities, general comment No. 2, para. 14.

[38] A/HRC/31/62, paras. 28-31.

5. Obligation to adopt reasonable measures to realize the right to adequate housing to the maximum of available resources

44. Article 2 (1) of the Convention mirrors the International Covenant on Economic, Social and Cultural Rights in its provision that each State party shall undertake to take measures to the maximum of its available resources, with a view to achieving progressively the full realization of the rights enshrined in those instruments. The reasonableness standard has been incorporated into the Optional Protocol to the Covenant. Courts, treaty bodies and commentators have articulated a standard of "reasonableness" in assessing whether the positive measures taken by States meet the requirements of international human rights law.[39]

45. The Committee on Economic, Social and Cultural Rights has identified some indicators of whether a State has satisfied a standard of reasonableness, including:

(a) The extent to which the measures taken were deliberate, concrete and targeted towards the fulfilment of the right;

(b) Whether resource allocation is in accordance with international human rights standards;

(c) Whether the steps were taken within a reasonable time frame;

(d) Whether the precarious situation of disadvantaged and marginalized individuals or groups has been addressed;

(e) Whether policies have prioritized grave situations or situations of risk;

(f) Whether decision-making is transparent and participatory.[40]

46. The standard of reasonableness to assess States' compliance with the obligation to take measures to realize the right to adequate housing for persons with disabilities runs parallel to the similar standard of reasonableness that is applied in the context of the accommodation of the individual needs of persons with disabilities. The former relies on a standard of maximum of available resources to assess programmatic measures to address the systemic needs of persons with disabilities, while the latter relies on a standard of undue or disproportionate burden in relation to the specific measures required in individual cases. In many cases, however, there is no clear divide between individual needs and needs shared with others in the positive measures taken by Governments to ensure access to accessible housing. As Janet E. Lord and Rebecca Brown note, "the obligation to reasonably accommodate the unique needs of persons with disabilities merges with the obligation under the [International Covenant on Economic, Social and Cultural Rights] and under the economic, social and cultural rights provisions in the [Convention on the Rights of Persons with Disabilities], to apply the maximum of available resources to realizing the substantive rights in question".[41]

47. For the Special Rapporteur, it is critical that both dimensions of States' positive obligations be implemented on the basis of a robust standard of reasonableness. That means adopting reasonable measures to address the systemic

[39] See Malcom Langford and others, eds., *The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: A Commentary* (Pretoria, South Africa, Pretoria University Law Press, 2016).

[40] See Committee on Economic, Social and Cultural Rights, statement on an evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the Covenant, E/C.12/2007/1.

[41] Janet E. Lord and Rebecca Brown, "The role of reasonable accommodation in securing substantive equality for persons with disabilities: the United Nations Convention on the Rights of Persons with Disabilities", in *Critical Perspectives on Human Rights and Disability Law*, Marcia H. Rioux, Lee Ann Basser and Melinda Jones, eds., (Brill Publishers, 2011), p. 279.

need for adequate and accessible housing of persons with disabilities by implementing necessary programmes and budgetary allocations while also meeting the immediate obligation to accommodate individual needs. The requirement of reasonable measures in both contexts should be seen as a rigorous standard to be met, never as a defence for inaction.[42]

48. The Special Rapporteur also emphasizes that reasonable accommodation in housing is often linked to systemic patterns of discrimination and imbalances in power "which result in a society being designed well for some and not for others".[43] The Supreme Court of Canada warned that reasonable accommodation claims should not be allowed to shield systemic discrimination from scrutiny or leave in place imbalances in power that have led to the neglect of the needs or perspectives of marginalized groups in the design of policies.[44] It is important to ask, in each individual case, not only what is required by the individual person with a disability to ensure equality, but also why the housing system created the need for individual accommodation in the first place. Requests for modifications of buildings or housing policies are usually only made because those requirements were not adequately considered when buildings or policies were designed in the first place. Persons with disabilities must be empowered to challenge housing, planning and zoning, social protection and justice systems that fail to meet their needs and thus deny them access to adequate housing.

IV. Key components of adequate housing

49. In its general comment No. 4 (1991) on the right to adequate housing, the Committee on Economic, Social and Cultural Rights identified key factors to be considered in determining if housing is adequate. The following is a consideration of those factors as they apply to persons with disabilities.

1. Security of tenure

50. Security of tenure is a cornerstone of the right to housing. Persons with disabilities are less likely to enjoy security of tenure and often experience catastrophic results owing to displacement and forced eviction. They often lose not only their physical home but also a network of support and contacts, without which they may not survive.

51. The obligations of both public and private housing providers with respect to security of tenure must be interpreted and applied in the light of the overriding obligation to ensure the right of persons with disabilities to live in adequate and secure housing within the community, with access to services and support. States must ensure legal protection against forced evictions in all forms of housing tenure, from ownership and formal rental agreements to informal settlements.[45] No eviction should be permitted that would result in the loss of housing or necessary forms of support for persons with disabilities.[46] Where relocation is unavoidable or agreed to by those affected, alternative housing must be provided that meets all requirements

[42] Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties' obligations, paras. 9-11.

[43] Shelagh Day and Gwen Brodsky, "The duty to accommodate: who will benefit?", *Canadian Bar Review*, vol. 75 (1996).

[44] Ibid.

[45] Guiding principles on security of tenure for urban poor, See A/HRC/25/54.

[46] Communication No. 5/2015, *Ben Djazia and Bellili v. Spain*, views adopted on 20 June 2017, para. 16.5; Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997) on forced evictions, para. 16; Basic principles and guidelines on development based evictions and displacement, A/HRC/4/18, annex I, paras. 54-56.

for accommodation of disability and ensures access to community support.[47] Persons with disabilities should not be required to move from the centres of cities, where there are services and opportunities for participation in social networks and employment, to outlying areas, where opportunities for meaningful social participation are fewer, leading to isolation.[48]

2. Affordability

52. The inability to afford adequate housing is frequently the greatest obstacle facing persons with disabilities in realizing their right thereto. They are more likely to live in poverty, and they have higher housing, equipment and health-care costs. Family income is reduced when a family member has to take on the role of support person. Inadequate levels of financial assistance and/or housing subsidies often make it impossible for persons with disabilities to obtain adequate housing and significantly increase the risk of homelessness.

53. Governments have obligations to remove not only physical but also financial and legal barriers to access to adequate housing for persons with disabilities. They must ensure the affordability of rents, utilities and other essential services, by providing the necessary financial assistance, such as through rental subsidies, and addressing barriers relating to rental contracts and access to loans.[49]

3. Availability of services

54. The availability of services is essential to independent living and agency over where and how to live in the community. Access to water and sanitation is a priority issue for many persons with disabilities.[50] In addition to the core services identified in general comment No. 4, States must ensure that persons with disabilities have access to a diverse range of services linked to living autonomously, as articulated in article 19 of the Convention, including in-home, residential and community support services.[51] Services should be matters of free choice for persons with disabilities, not linked to security of tenure or residency.

4. Habitability

55. Standards of habitability vary considerably with different impairments and must respond to both the physical and the social dimensions of housing. Persons with disabilities may find it difficult to build habitable homes in informal settlements and face challenges in relation to maintenance and repair. Protection against violence or abuse is also critical to ensuring habitability for persons with disabilities. Physical modifications may be required to ensure habitability, such as sound-proofing of apartments for persons with autism.

5. Location

56. Persons with disabilities frequently have critical needs in relation to the location of housing in order to ensure access to work, accessible transportation, support services and health-care facilities. Patterns of displacement of low-income communities to the peripheries of cities have disproportionately affected persons

[47] Committee on Economic, Social and Cultural Rights, general comment No. 7, para. 16; Basic principles and guidelines on development based evictions and displacement, A/HRC/4/18, annex I, paras. 32-33.

[48] Guiding principles on security of tenure for urban poor, A/HRC/25/54, para. 29.

[49] A/71/314, para. 13.

[50] UNICEF, "Good practices in the provision of accessible and inclusive WASH services — UNICEF country offices" (2015).

[51] A/HRC/28/37, para. 32.

with disabilities. Such displacement and isolation are contrary to the right to housing and other human rights of persons with disabilities.

6. Cultural adequacy

57. Cultural identity and expression are key to self-realization and inclusion in communities for many persons with disabilities. All the components of adequate housing identified above must be understood in the context of the right to culturally adequate housing. Accessible housing constructed on the basis of "universal" barrier-free design, for example, must respect diverse cultural identities.

58. States have an obligation to provide housing in a manner that allows persons with disabilities to express their cultural identity and participate meaningfully in the development of culture within their communities.

V. Claiming the right to housing of persons with disabilities

59. The significant potential of the disability human rights paradigm to advance the realization of the right to housing has not yet been fully tested in courts. Courts and human rights bodies have been reluctant to engage with the positive obligation of States to address systemic violations of the right to adequate housing experienced by persons with disabilities.

60. In only one communication considered under the Optional Protocol to the Convention on the Rights of Persons with Disabilities has a violation of article 28 been alleged. In the case of *H.M. v. Sweden*, a municipality refused to grant an exception to a development plan to allow the claimant to build a hydrotherapy pool required for the treatment of her health condition. Having found that the refusal of reasonable accommodation violated the claimant's right to non-discrimination, as well as her rights under article 19, the Committee declined to decide whether that denial also violated article 28.[52] It is noteworthy, however, that the Committee extended the remedy beyond the author's individual circumstances, recommending that the State party ensure that "its legislation and the manner in which it is applied by domestic courts is consistent with the State party's obligations under the Convention".[53] This is an example of the manner in which reasonable accommodation claims can give rise to individual as well as systemic and/or legislative remedies.

61. Under its inquiry procedure, the Committee responded to concerns about violations of the right to adequate housing raised by persons with disabilities in the United Kingdom of Great Britain and Northern Ireland and by the previous mandate holder after her mission. The Committee documented the extremely punitive and damaging effects of austerity measures, including the removal of the spare-room subsidy and a reduction of the housing benefit for working-age social housing tenants.[54] In Scotland, the reform affected 82,000 households, 80 per cent of which were households with adults with disabilities. The Committee concluded that the impact of those measures constituted "grave or systematic violations" of the rights of tenants of social housing with disabilities, including the rights to reasonable accommodation and non-discrimination, to independent living and being included in the community, to an adequate standard of living, including adequate housing, to social protection and to employment.[55]

[52] See, for example, communication No. 3/2011, *H.M. v. Sweden*.
[53] Ibid., para. 9.
[54] A/HRC/25/54/Add.2, paras. 46-51.
[55] CRPD/C/15/R.2/Rev.1, para. 113.

62. The most substantive remedies with respect to the right to adequate housing of persons with disabilities have tended to emerge from claims relating to deinstitutionalization and forced evictions. In the decision of the Supreme Court of the United States in *Olmstead v. L.C.*,[56] the Court recognized that States had an obligation, pursuant to the Americans with Disabilities Act, to take reasonable measures to ensure that persons with psychosocial disabilities were able to live outside institutions in the least restrictive environment, with a waiting list for services that moved at a "reasonable" pace. The federal Government, through the Department of Housing Urban Development, has provided guidelines and support to states to encourage the implementation of the decision. In another case under the Act, an appeals court ordered a private landlord to be flexible with respect to employment and income qualifications for rental housing, recognizing their exclusionary effect on persons with disabilities.[57]

63. In *Purohit and Moore v. the Gambia*, the African Commission on Human and Peoples' Rights considered a case of forcible institutionalization without due process in the Gambia. The Commission not only found that the legislation itself violated provisions of the African Charter on Human and Peoples' Rights, but also took note of the obligation to progressively realize the right to health by addressing violations of socioeconomic rights. The Commission stated that, throughout Africa, poverty rendered persons "incapable to provide the necessary amenities, infrastructure and resources that facilitate the full enjoyment of [the right to health]" and read into the right to health the obligation of States parties to the African Charter "to take concrete and targeted steps, while taking full advantage of its available resources, to ensure that the right to health is fully realized in all its aspects without discrimination of any kind".[58]

64. Through a number of cases, South African courts have played a leading role in establishing that, in order to meet a test of being "just and equitable", evictions must not be permitted to render persons homeless, with particular attention to person with disabilities.[59]

65. In India, the High Court of Bombay has applied the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act to require increased allocations of land (tenements) to persons with disabilities.[60] In a similar vein, the Supreme Court of Argentina, in a case involving a homeless mother and her son with a disability, stated that there should be a minimum guarantee of access to housing for those facing situations of vulnerability because of disability and ordered the immediate provision of shelter.[61]

66. In a decision adopted in 2008, the Supreme Court of Nepal ordered the release of all persons who were imprisoned because of psychosocial disabilities, in keeping with the right to equality, health and a dignified life. The Court directed the

[56] *Olmstead v. L.C.*, 527 U.S. 581 (1999).

[57] See *Giebeler v. M & B Associates*, 343 F.3d 1143 (9th Cir. 2003).

[58] *Purohit and Moore v. the Gambia*, African Commission on Human and Peoples' Rights, communication No. 241/2001 (2003), para. 84.

[59] See *Pitje v. Shibambo and Others* (case No. CCT144/15) [2016] ZACC 5; 2016 (4) BCLR 460 (CC), available from www.saflii.org/za/cases/ZACC/2016/5.html; *Arendse v. Arendse and Others* (case No. 12659/2009) [2012] ZAWCHC 156; [2012] 4 All SA 305 (WCC), available from www.saflii.org/za/cases/ZAWCHC/2012/156.html.

[60] See *India Centre for Human Rights and Law and Ors v. State of Maharashtra and Ors. and Bapu Trust for Research on Mind and Discourse*, 905-pil-44-09 (2009).

[61] See Supreme Court of Argentina, *Q.C., S.Y. c/ GCBA* s/ amparo (Q.C., S.Y. v. Government of the City of Buenos Aires, petition for *amparo*), 24 April 2012. See Public Defence Service of Buenos Aires, "Economic, social and cultural rights in the city of Buenos Aires", October 2015, pp. 64-67.

Government to enact a law to protect the rights of persons with psychosocial disabilities and to arrange health services and other necessary measures.[62] Local and international organizations have continued to exert pressure on the Government to implement the Court's order in line with the Convention on the Rights of Persons with Disabilities. In a decision adopted in 2012, the Court ordered the Government to provide a monthly stipend, build shelters and appoint a social welfare worker in each district.[63]

67. Effective remedies for violations of the right to adequate housing must be provided wherever possible by interpreting and applying domestic law consistently with the right to housing of persons with disabilities under international human rights law.[64] The Committee on Economic, Social and Cultural Rights emphasized that "guarantees of equality and non-discrimination should be interpreted, to the greatest extent possible, in ways which facilitate the full protection of economic, social and cultural rights".[65] Unfortunately, even in the wealthiest countries, where there are sufficient resources to ensure the right to housing of persons with disabilities, courts have failed to interpret domestic human rights guarantees of equality consistently with the Convention on the Rights of Persons with Disabilities and refused to apply such guarantees so as to hold Governments accountable for failures to address widespread homelessness and inadequate housing among persons with disabilities.[66]

VI. Housing legislation, policies and strategies for persons with disabilities

68. Human rights protection in housing for persons with disabilities varies considerably among States. A growing number of countries have expressly included the right to housing in their constitutions or human rights legislation, and many also enumerate disability as a prohibited ground of discrimination. Some countries rely on universal guarantees of equality and non-discrimination, which are extended to persons with disabilities. In other countries, however, non-discrimination laws regarding disability are written in the context of specific sectors, such as employment, but fail to include non-discrimination and the duty to provide reasonable accommodation in the context of housing.[67]

69. Few States have developed rights-based strategies to address the housing circumstances of persons with disabilities within their jurisdiction, and even fewer have adopted a holistic and systemic approach. Many States continue to rely predominantly on charities and operate within an outdated charitable model in relation to disability. Where rights-based housing strategies and programmes have been developed, they are often not matched with commitments of funds or effective

[62] See *Sudharshan Subedi on behalf of the Nepal Disabled Human Rights Centre (DHRC) et al v. Council of Ministers*, 2063 B.S., writ No. 129, order date 16 October 2008.

[63] See Supreme Court of Nepal, Order No. 068-WO-0188, 14 August 2012. Available from http://dhrcnepal.org.np/wp-content/uploads/2016/09/Supreme-Court-Verdict-English.pdf.

[64] Committee on Economic, Social and Cultural Rights, general comment No. 9 (1998) on the domestic application of the Covenant, para. 3.

[65] Ibid., para 15.

[66] For example, *Tanudjaja v. Canada (Attorney General)*, 2014 ONCA 852, para. 33; *Hotak v. London Borough of Southwark*, [2015] UKSC 30, para. 91.

[67] See Denmark, Act on the prohibition of discrimination on the labour market, No. 1349 of 2008; Council of the European Union, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Chile, Act establishing measures against discrimination, No. 20.609 of 2012.

implementation.[68] In other cases, policies may extend to provide support to accommodate physical impairments with respect to housing, but not psychosocial and intellectual disabilities.

70. Information provided by States to the Special Rapporteur for the present report indicates that progress is being made. Mexico reports that its Federal Law for the Inclusion of Persons with Disabilities of 2011 and its regulation of 2012 explicitly provide for the right to dignified housing (art. 18). The legislation also establishes the right to universal accessibility and housing (art. 16) and is complemented by initiatives and programmes that provide subsidies and lines of credit to make physical alterations to houses to enhance living conditions for persons with disabilities.[69]

71. The Constitution of Kenya of 2010 prohibits discrimination on the ground of disability, affirms a right to reasonable access to all places, including the built environment and housing, and provides for the right to accessible and adequate housing. In the national disability policy of Kenya, it is recognized that ownership of land, housing and property is a fundamental human right of persons with disabilities, essential to security, self-reliance and livelihood. Through the policy, it is sought to eliminate barriers to acquiring and owning land, housing and property, such as high costs and societal prejudices against the ownership and inheritance of land by persons with disabilities. In all housing schemes, it is required to reserve at least 5 per cent of accessible houses for persons with disabilities, and accessible design standards are applied. In addition, inclusive financial and credit services targeting persons with disabilities are promoted.

72. Under the National Disability Council Act of 2004 of Namibia, a council is established to monitor the implementation of a national policy on disability, including ensuring adequate allowances and pensions for persons with disabilities and developing and providing accessible housing through public schemes.[70]

73. Under the Persons with Disabilities Act (2012) of Zambia, an agency is established that coordinates consultation with organizations of persons with disabilities, State institutions and other civil society actors to integrate a disability perspective into national policies, plans and decision-making sectors, and that can make representations on behalf of or provide legal assistance to persons with disabilities in proceedings relating to the rights of persons with disabilities (art. 20 (2) (e)).

74. Finland reported that its framework for advancing the right to housing for persons with disabilities included: the constitutional protection of the right to housing; the provision of supportive housing and community-based support with a commitment to self-determination in the use of forms of support and services; funding for building and renovating housing to make it accessible and suitable; national action plans on homelessness; and a range of supervisory mechanisms, including an advisory board for the rights of persons with disabilities to oversee coordinated efforts.[71] Finland stated that it considered those currently living in institutions to be homeless and had set a deadline of 2020 to close all institutions, emphasizing the right to live in the community with access to the necessary services and forms of support.

[68] See the submissions for the present report by Inclusion Ireland and Profound Ireland.
[69] See the submission by Mexico for the present report.
[70] See the submission by Namibia for the present report and https://dredf.org/legal-advocacy/international-disability-rights/international-laws/namibia-national-disability-council-act/.
[71] See the submission by Finland for the present report.

75. In its recent white paper on the rights of persons with disabilities, the Department of Social Services of South Africa called for a comprehensive strategy to realize the right to adequate housing of persons with disabilities consistent with the transformative nature of the constitutional right to housing, including supported community living plans, subsidized housing support, universal design as a requirement in infrastructure grants and a sustainable community-based system for support for independent living.[72] In the white paper, emphasis was laid on the critical importance of strengthening the enforcement of existing legislation, improving access to courts, complaints mechanisms and institutions and strengthening the capacity of institutions such as the South African Human Rights Commission and of organizations for persons with disabilities to support persons with disabilities in gaining access to justice.[73]

76. A number of Governments appear to be working to ensure that both public and privately developed housing meets accessibility requirements. In Singapore, the Housing and Development Board has committed itself to ensuring that barrier-free housing is implemented across its public housing sector, in which 80 per cent of the population resides, including through measures such as increasing elevator availability, Braille signage and voice synthesizers.[74] In Brazil, in the Act on the Inclusion of Persons with Disabilities (2015), it is required that 3 per cent of publicly funded housing be available to persons with disabilities.

77. A number of jurisdictions have adopted a "housing first" model to address homelessness.[75] The model provides chronically homeless persons, in particular those with psychosocial impairments and/or drug or alcohol addictions, with long-term housing and the necessary forms of support.

78. A number of countries identified their national human rights institutions as having the jurisdiction to oversee the implementation of the right to housing for persons with disabilities, including Finland, Namibia and the Republic of Korea.[76]

79. Subnational and local governments have also initiated important efforts to address the right to adequate housing of persons with disabilities. Article XIV (1) of the World Charter for the Right to the City provides for universal realization of the right to housing and emphasizes the need for accessible and suitable locations. In article X of the Global Charter-Agenda for Human Rights in the City, it is recommended that cities adopt regulations to ensure the accessibility of housing for persons with disabilities. Some cities have sought to initiate inclusive zoning policies to prevent restrictions on supportive housing. Others have adopted measures to address affordability, such as housing benefits and/or allowances, grants or loans for required adaptations, lower interest rates on housing loans and reduced housing taxes for families with a family member with a disability.

VII. Conclusions and recommendations

80. **Few marginalized groups suffer such egregious violations of the right to housing as do persons with disabilities. Across the world, they are commonly homeless, institutionalized and subjected to cruel and inhuman treatment for**

[72] South Africa, Department of Social Development, "White paper on the rights of persons with disabilities", No. 230, 9 March 2016, pp. 89-91.

[73] Ibid., pp. 78-80.

[74] See Singapore, Housing and Development Board, "Towards a barrier-free environment in public housing". Available from www.bca.gov.sg/BarrierFree/others/HDB.pdf.

[75] See submissions from Finland, the European Federation of National Organisations on Working with the Homeless and the European Disability Forum for the present report.

[76] See the submissions of those countries for the present report.

no reason other than their disability. They endure isolation, stigmatization and discrimination in all aspects of housing, whether access, design or policy development and implementation. Their very lives are imperilled by housing and communities that are based on exclusion and uniformity rather than inclusion and diversity. Yet it is on the basis of those experiences and the claims to equal dignity and rights advanced by those affected that the disability human rights paradigm has emerged. This paradigm has the potential to breathe new life into the right to adequate housing because it underscores and amplifies the essence of that right, namely, having a place to live in dignity, it allows persons with disabilities to participate in their communities and it recognizes diversity as a strength that makes households and communities thrive.

81. If the immense potential of the integration of the disability rights paradigm with the right to housing is to be realized, States and other actors will have to make a fundamental shift in the way in which they think about and interact with the human rights of persons with disabilities.

82. In that regard, the Special Rapporteur offers the following recommendations:

(a) In consultation with persons with disabilities and their organizations, States should:

(i) Prioritize and recognize in domestic law the obligation to realize the right to housing of persons with disabilities to the maximum of available resources, tying this legal obligation to the commitment to ensure adequate housing for all by 2030, in accordance with target 11.1 of the Sustainable Development Goals;

(ii) Ensure that non-discrimination provisions are based on substantive equality, recognizing positive obligations to address the systemic inequality in housing experienced by persons with disabilities;

(iii) Ensure that all persons with disabilities are able to live free from institutionalization and that access to adequate housing, the requisite services and appropriately trained support is provided in the community;

(iv) Ensure access to justice and effective accountability mechanisms for claims to the right to adequate housing by persons with disabilities, including when States have failed to adopt reasonable programmatic measures to realize the right;

(v) Adopt a clear policy framework for the inclusion of all persons with disabilities in all areas of housing policy and design, ensuring that those living in poverty or homelessness, women, ethnic, religious or linguistic minorities, indigenous peoples, migrants and both young and older persons are fully included;

(vi) Design and implement both qualitative and quantitative data collection about the housing circumstances of persons with disabilities, disaggregated on the basis of the standard survey questions of the Washington Group on Disabilities;

(vii) Address homelessness among persons with disabilities on an urgent basis and prioritize measures to address the circumstances of those living in informal settlements and homeless encampments;

(viii) **Ensure that security of tenure and other legal protection in housing are developed and applied in a manner that recognizes the distinctive needs of persons with disabilities;**

(ix) **Ensure that the obligation of reasonable accommodation for persons with disabilities is applied to public and private housing providers, financial actors and all aspects of the housing environment;**

(x) **Ensure that all persons with disabilities can exercise their right to legal capacity in any issue relating to the right to adequate housing, including to have access to and sign contracts for credit and leases;**

(xi) **Ensure that the necessary support is provided to organizations of persons with disabilities to facilitate effective participation in all areas of housing policy and decision-making;**

(xii) **Establish an independent budgetary review mechanism to ensure that budget allocations for housing and related forms of support are consistent with the "maximum of available resources" standard;**

(xiii) **Provide adequate financial and other support to persons with disabilities in a manner that ensures choice as to where to live and how support will be provided and that covers the full cost of housing and related expenses;**

(xiv) **Adopt accessibility requirements that apply to new housing and implement a clear time frame for ensuring accessibility within existing housing stock;**

(xv) **Ensure that refugees, internally displaced persons and migrants with disabilities enjoy their right to adequate housing, notably by including the relevant international human rights provisions in the forthcoming global compact on refugees and the global compact for safe, orderly and regular migration;**

(xvi) **Ensure that local governments implement and adhere to the right to housing in all municipal action, including urban planning, zoning, planning of transportation and the production and maintenance of housing;**

(b) **Courts, tribunals and national human rights institutions should:**

(i) **Interpret and apply domestic law in accordance with the right to adequate housing of persons with disabilities and in particular recognize that the rights to life, liberty, substantive equality and non-discrimination require Governments to address homelessness, provide support for living in the community and respond to the diverse housing needs of persons with disabilities;**

(ii) **Ensure access to justice and effective accountability for all aspects of State obligations with respect to the right to housing of persons with disabilities, including budgetary allocations and the effectiveness of strategies and programmes;**

(c) **Civil society and organizations of persons with disabilities should take forward or support legal challenges to structural violations of the right to housing of persons with disabilities and seek systemic remedies.**